

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: Gilberto Aponte	20-10808 ELF
	Chapter 13 Proceeding
Debtor(s)	
WELLS FARGO USA HOLDINGS, INC.	
Movant	
v. Gilberto Aponte Wilma L. Aponte, (Co-Debtor) and William C. Miller, Esquire	
Respondents	

MOTION OF WELLS FARGO USA HOLDINGS, INC.  
FOR RELIEF FROM THE AUTOMATIC STAY

("Movant") hereby moves this court, pursuant to 11 U.S.C. § 362, for relief from the automatic stay and the co-debtor stay of 11 U.S.C. §1301 with respect to certain real property of the Debtor(s) having an address of 419 Selma Street, Philadelphia, PA 19116 (the "Property"), for all purposes allowed by the Note (defined below), the Mortgage (defined below), and applicable law, including but not limited to the right to foreclose. In further support of this Motion, Movant respectfully states:

1. A petition under Chapter 13 of the United States Bankruptcy Code was filed with respect to the Debtor(s) on February 7, 2020.
2. The Chapter 13 Plan was confirmed on June 9, 2020 .A hearing to consider Debtor(s) motion to Modify Chapter 13 plan is scheduled for March 2, 2021.
3. The Debtor(s) has/have executed and delivered or is/are otherwise obligated with respect to that certain promissory note in the original principal amount of \$141,659.83 (the "Note"). A copy of the Note is attached hereto as **EXHIBIT A**. Movant is an entity entitled to enforce the Note.
4. Pursuant to that certain Mortgage dated August 15, 2003, and recorded in the office of the county clerk of Philadelphia County, Pennsylvania, (the "Mortgage") all obligations (collectively, the "Obligations") of the Debtor(s) under and with respect to the Note and the Mortgage are secured by the Property. A copy of the Mortgage is attached hereto as **EXHIBIT B**.
5. A copy of the Mortgage Merger Documentation is attached hereto as **EXHIBIT C**.
6. The Terms of the Debt Agreement were amended by a loan modification agreement entered into by WELLS FARGO USA HOLDINGS, INC and Debtor(s) dated August 21, 2006 (the Loan Modification Agreement). **EXHIBIT D**.
7. Wells Fargo Bank, N.A. services the loan on the Property referenced in this Motion. In the event the automatic stay in this case is modified, this case dismisses, and/or the Debtor(s) obtain/s a discharge and a foreclosure action is commenced on the mortgaged property, the foreclosure will be conducted in the name of Movant. Debtor(s) executed a promissory note secured by a mortgage or deed of trust. The promissory note is either made payable to Creditor or has been

duly indorsed. Creditor, directly or through an agent, has possession of the promissory note.

Creditor is the original mortgagee or the beneficiary or assignee of the mortgage or deed of trust.

8. As of March 12, 2021, the outstanding amount of the Obligations less any partial payments or suspense balance is \$10,723.49.
9. The following chart sets forth the number and amount of post-petition payments due pursuant to the terms of the Note that have been missed by the Debtor(s) as of March 12, 2021.

# of Missed Pymts	From:	To:	Monthly Pymt Amt	Total Missed Pymts:
7	09/01/2020	03/01/2021	\$198.15	\$1,387.05
Less Post-Petition Partial Payments (Suspense Balance):				(\$174.63)
TOTAL:				\$1,212.42

10. As of March 12, 2021, the total post-petition arrearage/delinquency is \$1,212.42.
11. The estimated market value of the property is \$251,488.80. The basis for such valuation is Debtor(s) filed Schedule A/B, which is attached hereto as **EXHIBIT E**. The debtor claimed exemption in Schedule C on the property in the amount of \$25,150.00.
12. Upon information and belief, the encumbrances on the property listed in the schedules or otherwise known, including but not limited to the encumbrances granted to Movant, listed in order of priority are: (I) Movant (\$10,723.49) (II) American Heritage Federal Credit Union (\$6,315.03) per claim filed April 14, 2020.
13. The amount of the next monthly payment of the Debtor(s) under the terms of the Note and Mortgage is \$198.15 and will come due on April 1, 2021.
14. Cause exists for relief from the automatic stay for the following reasons:
  - a. Movant's interest in the property is not adequately protected.
  - b. Post confirmation payments required by the confirmed plan or proposed plan have not been made to Movant.
  - c. Pursuant to 11 U.S.C. § 362(d)(2)(A), and pursuant to § 362(d)(2)(B), the Property is not necessary for an effective reorganization.

WHEREFORE, Movant prays that this Court issue an Order terminating or modifying the stay and granting the following:

1. Relief from the stay for all purposes allowed by the Note, the Mortgage, and applicable law, including but not limited to allowing Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.
2. That the Order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.
3. That the 14 Day Stay described by Bankruptcy Rule 4001(a)(3) be waived.
4. For such other relief as the Court deems proper.

5. Movant further requests that upon entry of an order granting relief from stay and the co-debtor stay of 11 U.S.C. §1301, it be exempted from further compliance with Fed. Rule Bankr. P. 3002.1 in the instant bankruptcy case.

/s/ Harry B. Reese

POWERS KIRN, LLC

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Dated: March 18, 2021